(1) Supreme Court, U.S.

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No. _____

In the

Supreme Court of the United States

JOHN S. NORTON, JR.,

Petitioner,

v.

TOWN OF LONG ISLAND; STATE OF MAINE,

Respondents.

On Petition for Writ of Certiorari to the Supreme Judicial Court of Maine

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Prior to World War II, the United States government condemned "all right, title and interest" in a small area of submerged lands for military purposes pursuant to the Declaration of Taking Act. The federal government exercised exclusive dominion over the area for approximately twenty years. It then conveyed all interest in the submerged lands to John S. Norton Sr.; he exercised exclusive control over the area for the next thirty-five years, using it as a private boat slip. In 2000, the Town of Long Island ("Town") asserted that the lands were open for public use because they had always been encumbered by a state law "public trust" easement, claims supported by the State of Maine ("State"). The Supreme Judicial Court of Maine agreed, holding that the United States had failed to extinguish the State's "public trust" easement when condemning and occupying the lands, and thus passed title to Mr. Norton subject to that easement. Consequently, the court held that under the public trust doctrine, the Town and State could deny Mr. Norton's right to exclude others without providing just compensation.

1. When the United States condemns "all right, title and interest" in a small area of submerged tidal lands, and then occupies that land to the exclusion of the public, does it take the land free of a state "public trust doctrine" easement allowing public use of tidal lands?

2. May a state reassert its "public trust" easement (depriving the fee owner of the right to exclude others) without just compensation after the federal government conveys the lands to a private party?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Counsel for Petitioner hereby states that no party to this action is a corporation.

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PETITION FOR WRIT OF CERTIORARI

JOHN S. NORTON respectfully petitions for a writ of certiorari to review the judgment of the Supreme Judicial Court of Maine.

OPINIONS BELOW

The Opinion of the Maine Supreme Court is reported at 883 A.2d 889 (Me. 2005); it appears as Exhibit A to the petition. The final opinion of the Superior Court is not reported; it appears as Exhibit B. An initial order of the Superior Court on the Petitioner's federal takings claims is also appended as Exhibit C.

JURISDICTION

The judgment of the Maine Supreme Court was entered on October 11, 2005. On January 4, 2006, this Court extended the time for filing this Petition until March 10, 2006. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AT ISSUE

The Fifth Amendment to the United States Constitution provides in pertinent part: "nor shall private property be taken for public use without just compensation."

STATUTORY PROVISIONS AT ISSUE

The Declaration of Taking Act, Pub. L. No. 71-736, ch. 307, 46 Stat. 1421 (1931), codified as amended at: 40 U.S.C.A. § 3114 (West 2005), provides in pertinent part:

> The declaration of taking [by the United States] shall contain or have annexed to it—
>
> (1) a statement of the authority under which, and the public use for which, the land is taken;
>
> (2) a description of the land taken that is sufficient to identify the land;
>
> (3) a statement of the estate or interest in the land taken for public use;
>
> (4) a plan showing the land taken; and
>
> (5) a statement of the amount of money estimated by the acquiring authority to be just compensation for the land taken.

STATEMENT OF THE CASE

The Petitioner in this case seeks review of the decision of the Supreme Judicial Court of Maine, which rejected his challenge to the imposition of a public access easement, without compensation, on a small area of private submerged lands obtained in fee simple from the United States. The decision below addresses the question of whether the United States' condemnation and occupation of all interest in such lands extinguishes a state's "public trust" easement. If a state's public trust interests survive a federal taking, the submerged lands here were subject to an easement during federal control, and other unnumbered federal properties condemned and/or